

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**CHARLOTTE SELTMANN**  
Claimant

VS.

**RUSH COUNTY MEMORIAL HOSPITAL**  
Respondent

AND

**KANSAS HOSPITAL ASSOCIATION**  
Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**

Docket No. 175,511

**ORDER**

This Application for Review of the Preliminary Hearing Order entered by Special Administrative Law Judge William F. Morrissey on September 14, 1995, came on before the Appeals Board at the request of the respondent.

**ISSUES**

The respondent alleges that the Special Administrative Law Judge exceeded his jurisdiction in granting claimant's request for temporary total disability benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The initial issue the Appeals Board will address is whether this preliminary hearing order is subject to review. The respondent makes an effort in its brief to characterize the question of whether claimant is temporarily totally disabled as a "certain defense" that grants the Appeals Board jurisdiction to review a preliminary hearing order within the meaning of K.S.A. 44-534a(a)(2). The Appeals Board disagrees with respondent's argument. The Appeals Board finds that a defense that grants the Appeals Board jurisdiction to review a preliminary hearing order has to question the compensability of a claim, i.e., an employee's failure to use a safety guard or an employee's use of alcohol or drugs. Accordingly, since compensability of the claim is not placed at issue by this alleged defense, the Appeals Board does not have jurisdiction to review this preliminary hearing order.

Respondent also alleges that the Special Administrative Law Judge exceeded his authority when he granted claimant's request for temporary total disability benefits. See K.S.A. 44-551(b)(2)(A), as amended by S.B. 59 (1995). The Appeals Board finds that it does not have jurisdiction to review this issue as K.S.A. 44-534a(a)(2) gives the Special Administrative Law Judge specific authority to grant or deny requests for temporary total disability compensation in a preliminary hearing order pending a full hearing on the claim.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Application for Review filed by the respondent is dismissed, as the Appeals Board lacks jurisdiction to review the Preliminary Hearing Order of Special Administrative Law Judge William F. Morrissey, dated September 14, 1995.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Richard A. Boeckman, Great Bend, Kansas  
Jerry M. Ward, Great Bend, Kansas  
Richard Friedeman, Great Bend, Kansas  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director